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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/518,446	09/20/2005	Hans-Ludwig Elbe	CS8439	7847				
<div>34469      7590      05/14/2007 BAYER CROPSCIENCE LP Patent Department 100 BAYER ROAD PITTSBURGH, PA 15205-9741</div>								
EXAMINER CARR, DEBORAH D								
<table border="1"><thead><tr><th>ART UNIT</th><th>PAPER NUMBER</th></tr></thead><tbody><tr><td>1621</td><td></td></tr></tbody></table>					ART UNIT	PAPER NUMBER	1621	
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<table border="1"><thead><tr><th>MAIL DATE</th><th>DELIVERY MODE</th></tr></thead><tbody><tr><td>05/14/2007</td><td>PAPER</td></tr></tbody></table>					MAIL DATE	DELIVERY MODE	05/14/2007	PAPER
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05/14/2007	PAPER							

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/518,446

**Applicant(s)**

ELBE ET AL.

**Examiner**

Deborah D. Carr

**Art Unit**

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-15 and 21 is/are allowed.
- 6) ☒ Claim(s) 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see page 5, filed 22 February 2007, with respect to the rejection(s) of claim(s) 19-20 under 35 USC§102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 USC§ 112.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 16-18 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for controlling unwanted microorganisms such as Alternaria, Aspergillus, Chaetomium, Coniophora, Lentinus, Penicillium, Polyporus, Aureobasidium, Sclerophoma, Trichoderma, Escherichia, Pseudomonas, Staphylococcus, Plasmodiophoromycetes, Oomycetes, Chytridiomycetes, Zygomycetes, Ascomycetes, Basidiomycetes and Deuteromycetes, Pseudomonadaceae, Rhizobiaceae, Enterobacteriaceae, Corynebacteriaceae, Streptomyetaceae, Xanthomonas, Pseudomonas, Erwinia, Pythium, Phytophthora, Pseudoperonospora, Plasmopara, Bremia, Peronospora, Erysiphe, Sphaerotheca, Podosphaera, Venturia, Pyrenophora, Cochliobolus, Uromyces, Puccinia,

Art Unit: 1621

Sclerotinia, Tilletia, Ustilago, Pellicularia, Pyricularia, Fusarium, Botrytis, Septoria, Leptosphaeria, Cercospora, Altemaria, Pseudocercospora does not reasonably provide enablement for all unwanted microorganisms in the treatment of crops and materials. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

There is no guidance regarding the use of these compounds as anti-microbial in non-crop protection situations. The claims should be limited to crop protection, specific materials and microorganisms in which the microorganisms were actually controlled.

***Allowable Subject Matter***

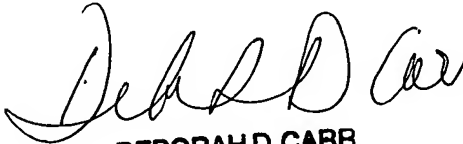
4. Claims 12-15 & 21 are allowed.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information

Art Unit: 1621

for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DEBORAH D. CARR  
PRIMARY EXAMINER

ddc